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07 AUG -2 PM 2:30
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT W. ZUCHOWSKI,

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC., a
Pennsylvania corporation,

Defendant.

Case No. **C07 03986**

COMPLAINT

DEMAND FOR JURY TRIAL

15 United States Code § 1692 *et seq.*
California Civil Code § 1788 *et seq.*

Plaintiff, ROBERT W. ZUCHOWSKI (hereinafter "Plaintiff"), based on information and belief and investigation of counsel, except for those allegations which pertain to the named Plaintiff or his attorneys (which are alleged on personal knowledge), hereby makes the following allegations:

I. INTRODUCTION

1. This is an action for statutory damages, attorney fees and costs brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.* (hereinafter "RFDCPA") which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.

1 Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

2 3. This action arises out of Defendant's violations of the Fair Debt Collection
3 Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

4 **III. VENUE**

5 4. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in
6 that a substantial part of the events or omissions giving rise to the claim occurred in this judicial
7 district. Venue is also proper in this judicial district pursuant to 15 U.S.C. § 1692k(d), in that the
8 Defendant transacts business in this judicial district and the violations of the FDCPA complained
9 of occurred in this judicial district.

10 **IV. INTRADISTRICT ASSIGNMENT**

11 5. This lawsuit should be assigned to the San Jose Division of this Court because
12 a substantial part of the events or omissions which gave rise to this lawsuit occurred in Santa Clara
13 County.

14 **V. PARTIES**

15 6. Plaintiff, ROBERT W. ZUCHOWSKI (hereinafter "Plaintiff"), is a natural
16 person residing in Santa Clara County, California. Plaintiff is a "consumer" within the meaning of
17 15 U.S.C. § 1692a(3) and a "debtor" within the meaning of Cal. Civil Code § 1788.2(h).

18 7. Defendant, NCO FINANCIAL SYSTEMS, INC., (hereinafter "NCO"), is a
19 Pennsylvania corporation engaged in the business of collecting debts in this state with its principal
20 place of business located at: 507 Prudential Road, Horsham, Pennsylvania 19044-2308. NCO may
21 be served at the address of its Agent for Service of Process at: NCO Financial Systems, Inc., c/o CT
22 Corporation System, 818 West 7th Street, Los Angeles, California 90017-3407. The principal
23 purpose of NCO is the collection of debts using the mails and telephone, and NCO regularly
24 attempts to collect debts alleged to be due another. NCO is a "debt collector" within the meaning
25 of 15 U.S.C. § 1692a(6) and Cal. Civil Code § 1788.2(c).

26 **VI. FACTUAL ALLEGATIONS**

27 8. On a date or dates unknown to Plaintiff, Plaintiff is alleged to have incurred
28 a financial obligation that was primarily for personal, family or household purposes, namely a

1 consumer credit account issued by Bank of America, N.A., and bearing the account number XXXX-
2 XXXX-XXXX-0003 (hereinafter “the alleged debt”). The financial obligation alleged to be owed
3 to Bank of America, N.A., by Plaintiff is a “debt” as that term is defined by 15 U.S.C. § 1692a(5)
4 and a “consumer debt” as that term is defined by Cal. Civil Code § 1788.2(f).

5 9. Plaintiff is informed and believes, and thereon alleges that sometime
6 thereafter on a date unknown to Plaintiff, the alleged debt was sold, assigned or otherwise
7 transferred to LVNV Funding, LLC.

8 10. Sometime thereafter on a date unknown to Plaintiff, the alleged debt was
9 consigned, placed or otherwise transferred to Defendant for collection from Plaintiff.

10 11. Thereafter, Defendant sent a collection letter (Exhibit “1”) to Plaintiff which
11 is a “communication” in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

12 12. A true and accurate copy of the collection letter from Defendant to Plaintiff
13 is attached hereto, marked Exhibit “1,” and by this reference is incorporated herein.

14 13. The collection letter (Exhibit “1”) is dated August 12, 2006.

15 14. The collection letter (Exhibit “1”) was Defendant’s first written notice
16 initially addressed to Plaintiff in connection with collecting the alleged debt.

17 15. On or about August 28, 2006, an employee of Defendant recorded the
18 following message on Plaintiff’s answering machine:

19 This message is for Robert Zuchowski. My name is Andrea. Please return my call
20 today at 1-800-233-1486, extension is 3615. Thank you.

21 16. On or about September 7, 2006, Defendant recorded the following automated
22 message on Plaintiff’s answering machine:

23 We need to speak with Robert Zuchowski about a personal business matter. Please
24 call us toll-free at 800-233-1486 and use ID code 6B18ET. That number again is
800-233-1486 and use ID code 6B18ET. Thank you. Goodbye.

25 17. Defendant’s August 28, 2006, and September 7, 2006, answering machine
26 messages were each a “communication” in an attempt to collect a debt as that term is defined by 15
27 U.S.C. § 1692a(2).

28 18. Defendant’s employees failed to disclose Defendant’s identity and the nature

1 of Defendant's business in each of its answering machine messages, in violation of 15 U.S.C. §
2 1692d(6) and Cal. Civil Code § 1788.11(b). See *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.
3 Supp. 2d 1104, 1112, 1118 (C.D. Cal. 2005).

4 19. Defendant's employees failed to disclose that each of its answering machine
5 messages were communications from a debt collector, in violation of 15 U.S.C. § 1692e(11). See
6 *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F. Supp. 2d 1104, 1116 (C.D. Cal. 2005); *Foti v. NCO*
7 *Financial Systems, Inc.*, 424 F. Supp. 2d 643, 669 (S.D.N.Y. 2006).

8 20. On or about September 8, 2006, Plaintiff mailed a letter to Defendant which
9 stated: "please be advised that I dispute this debt and refuse to pay."

10 21. A true and accurate copy of Plaintiff's letter disputing the debt and refusing
11 to pay the debt is attached hereto, marked Exhibit "2," and by this reference is incorporated herein.

12 22. Defendant received Plaintiff's letter disputing the debt and refusing to pay
13 the debt (Exhibit "3") on or about September 11, 2006.

14 23. A true and accurate copy of the USPS Tracking Report and Certified Mail
15 Return Receipt evidencing Defendant's receipt of Plaintiff's letter disputing the debt and refusing
16 to pay the debt (Exhibit "2") is attached hereto, marked Exhibit "3," and by this reference is
17 incorporated herein.

18 24. After receiving Plaintiff's letter notifying Defendant of his refusal to pay the
19 debt (Exhibit "2"), Defendant continued to communicate with Plaintiff in an attempt to collect the
20 debt.

21 25. After receiving Plaintiff's letter disputing the debt (Exhibit "2"), Defendant
22 continued its collection efforts without first obtaining and mailing Plaintiff a validation of the debt
23 being collected.

24 26. Thereafter, Defendant sent a second collection letter to Plaintiff which is a
25 "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

26 27. A true and accurate copy of the second collection letter from Defendant to
27 Plaintiff is attached hereto, marked Exhibit "4," and by this reference is incorporated herein.

28 28. The second collection letter (Exhibit "4") is dated September 14, 2006.

29. Plaintiff is informed and believes, and thereon alleges that Defendant deposited the envelope containing the second collection letter (Exhibit “4”) in the United States Mail on or about September 14, 2006.

VII. CLAIMS

FAIR DEBT COLLECTION PRACTICES ACT

30. Plaintiff brings the first claim for relief against Defendant under the Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

31. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 29 above.

32. Plaintiff is a “consumer” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(3).

33. Defendant, NCO, is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(6).

34. The financial obligation allegedly originally owed to Bank of America, N.A., by Plaintiff is a “debt” as that term is defined by the FDCPA, 15 U.S.C. § 1692a(5).

35. Defendant’s answering machine messages described above violate the FDCPA. The violations include, but are not limited to, the following:

- a. Defendant failed to disclose Defendant’s identity and the nature of Defendant’s business, in violation of 15 U.S.C. § 1692d(6); and
- b. Defendant failed to disclose that the communications were from a debt collector, in violation of 15 U.S.C. § 1692e(11).

36. Defendant has further violated the FDCPA in the following respects:

- a. Defendant continued to communicate with Plaintiff in an attempt to collect the alleged debt after receiving a written notification that Plaintiff refused to pay the debt being collected, in violation of 15 U.S.C. § 1692c(c); and
- b. Defendant continued its collection efforts against Plaintiff after receiving a written notification within the thirty-day validation period

1 from Plaintiff disputing the debt being collected in its entirety
2 without first obtaining a verification of the debt and mailing a copy
3 of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b).

4 37. Defendant's acts as described above were done intentionally with the purpose
5 of coercing Plaintiff to pay the alleged debt.

6 38. As a result of Defendant's violations of the FDCPA, Plaintiff is entitled to an
7 award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

8 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

9 39. Plaintiff brings the second claim for relief against Defendant under the
10 Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), California Civil Code §§ 1788-1788.33.

11 40. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
12 through 37 above.

13 41. Plaintiff is a "debtor" as that term is defined by the RFDCPA, Cal. Civil Code
14 § 1788.2(h).

15 42. Defendant, NCO, is a "debt collector" as that term is defined by the RFDCPA,
16 Cal. Civil Code § 1788.2(c).

17 43. The financial obligation allegedly originally owed to Bank of America, N.A.,
18 by Plaintiff is a "consumer debt" as that term is defined by the RFDCPA, Cal. Civil Code §
19 1788.2(f).

20 44. Defendant's answering machine messages described above violate the
21 RFDCPA. The violations include, but are not limited to, the following:

22 a. Defendant failed to disclose Defendant's identity and the nature of
23 Defendant's business, in violation of 15 U.S.C. § 1692d(6), as
24 incorporated by Cal. Civil Code § 1788.17 and Cal. Civil Code §
25 1788.11(b);

26 b. Defendant failed to disclose that the communications were from a
27 debt collector, in violation of 15 U.S.C. § 1692e(11), as incorporated
28 by Cal. Civil Code § 1788.17.

1 45. Defendant has further violated the RFDCPA in the following respects:

- 2 a. Defendant continued to communicate with Plaintiff in an attempt to
3 collect the alleged debt after receiving a written notification that
4 Plaintiff refused to pay the debt being collected, in violation of 15
5 U.S.C. § 1692c(c), as incorporated by Cal. Civil Code § 1788.17; and
6 b. Defendant continued its collection efforts against Plaintiff after
7 receiving a written notification within the thirty-day validation period
8 from Plaintiff disputing the debt being collected in its entirety
9 without first obtaining a verification of the debt and mailing a copy
10 of such verification to Plaintiff, in violation of 15 U.S.C. § 1692g(b),
11 as incorporated by Cal. Civil Code § 1788.17.

12 46. Defendant's acts as described above were done willfully and knowingly with
13 the purpose of coercing Plaintiff to pay the alleged debt, within the meaning of Cal. Civil Code §
14 1788.30(b).

15 47. As a result of Defendant's willful and knowing violations of the RFDCPA,
16 Plaintiff is entitled to an award of a statutory penalty in an amount not less than one hundred dollars
17 (\$100) nor greater than one thousand dollars (\$1,000), pursuant to Cal. Civil Code § 1788.30(b).

18 48. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to
19 an award of statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil
20 Code § 1788.17.

21 49. As a result of Defendant's violations of the RFDCPA, Plaintiff is entitled to
22 an award of his reasonable attorney's fees and costs pursuant to Cal. Civil Code § 1788.30(c) and
23 15 U.S.C. § 1692k(a)(3), as incorporated by Cal. Civil Code § 1788.17.

24 50. Pursuant to Cal. Civil Code § 1788.32, the remedies provided under the
25 RFDCPA are intended to be cumulative and in addition to any other procedures, rights or remedies
26 that the Plaintiff may have under any other provision of law.

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VIII. REQUEST FOR RELIEF

Plaintiff requests that this Court:

- a. Assume jurisdiction in this proceeding;
- b. Declare that Defendant's answering machine messages violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692d(6) and 1692e(11);
- c. Declare that Defendant's answering machine messages violated the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§ 1788.11(b) and 1788.17;
- d. Declare that Defendant violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692c(c) and 1692g(b);
- e. Declare that Defendant violated the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code § 1788.17;
- f. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- g. Award Plaintiff a statutory penalty in an amount not less than \$100 nor greater than \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- h. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17;
- i. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17 and 1788.30(c); and
- j. Award Plaintiff such other and further relief as may be just and proper.

CONSUMER LAW CENTER, INC.

By: /s/ Fred W. Schwinn
Fred W. Schwinn, Esq.
Attorney for Plaintiff
ROBERT W. ZUCHOWSKI

CERTIFICATION PURSUANT TO CIVIL L.R. 3-16

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, ROBERT W. ZUCHOWSKI, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn
Fred W. Schwinn, Esq.